

Introduced by Senator Perata

February 24, 2006

An act to add Article 7.6 (commencing with Section 4595) to Chapter 8 of Part 2 of Division 4 of the Public Resources Code, relating to forest resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1799, as introduced, Perata. Forest resources: heritage trees.

(1) Existing law contains various provisions designed to encourage responsible forest resource management calculated to serve the public's need for timber and other forest products, while giving consideration to the public's need for watershed protection, fisheries and wildlife, and recreational opportunities.

This bill would enact the Heritage Tree Preservation Act to prohibit (1) cutting or causing a substantial probability of significant harm to any heritage tree, as defined, in this state, (2) using a heritage tree, as defined, in a manner that significantly harms a heritage tree, and (3) cutting a heritage tree pursuant to certain statutory and regulatory exemptions. The act would prohibit the State Board of Forestry and Fire Protection from adopting any regulation that requires or authorizes the cutting of, or significant harm to, a heritage tree.

This bill would establish the Heritage Tree Preservation Fund in the State Treasury. The bill would authorize the Wildlife Conservation Board to expend the moneys in the fund, upon appropriation by the Legislature, for purposes of the act, including the administrative costs of the board in implementing the act.

This bill would require all timber operations to comply with the act, except as specified.

This bill would prescribe the criminal and civil penalties for action taken in violation of any provision of the act. By making a violation of

these provisions a crime, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 7.6 (commencing with Section 4595) is
2 added to Chapter 8 of Part 2 of Division 4 of the Public
3 Resources Code, to read:

4
5 Article 7.6. Heritage Tree Preservation Act
6

7 4595. This article shall be known, and may be cited as, the
8 Heritage Tree Preservation Act.

9 4595.1. The Legislature finds and declares all of the
10 following:

11 (a) Most of California's original old-growth forests have been
12 cut down.

13 (b) Currently, no state or federal statute bans the cutting of
14 most old-growth trees in the state of California.

15 (c) California's remaining old-growth trees are a unique
16 natural treasure. California tree species include the tallest,
17 largest, and some of the oldest living things on Earth. Some
18 California tree species live to be thousands of years old.

19 (d) Numerous threatened and endangered species depend upon
20 ancient and old-growth trees for their survival.

21 (e) Old-growth trees and mature forests store more carbon, a
22 component of the greenhouse gas, carbon dioxide, than young
23 trees and tree plantations do. Some California old-growth forests
24 sequester more carbon than any other forest type on Earth,
25 reducing global warming from industrial and other emissions.

26 (f) Most of California's surface water originates in forested
27 areas.

1 (g) Old-growth forests are a rare and threatened forest type.
2 Individual old-growth trees are building blocks for restoring
3 natural forest structure and maintaining ecological diversity.

4 (h) People from all over the world come to California to see
5 our heritage of ancient trees, which benefits the economy of
6 California.

7 (i) Whenever appropriate funding sources are available,
8 acquisition of old-growth forests from willing sellers should be a
9 priority for the Wildlife Conservation Board, Department of
10 Parks and Recreation, State Coastal Conservancy, California
11 Tahoe Conservancy, and other public agencies with land
12 conservation responsibilities, so that they may be protected for
13 their environmental, recreational, educational, and aesthetic
14 values and for the enjoyment and appreciation of present and
15 future generations of residents and visitors.

16 (j) Each old-growth tree, living since before statehood, has
17 aesthetic and historic significance, often providing significant
18 benefits to land, air, water, flora, fauna, and noise reduction.

19 (k) The preservation and maintenance of old-growth trees,
20 native vegetation, and wildlife on forestland provide a biologic
21 reserve, and provide benefits to the biological diversity,
22 resilience, and productivity of forestland.

23 (l) The risk of severe fires is increased by removing large,
24 fire-resistant, old-growth trees from the forest, because those
25 trees shade out flammable undergrowth and preserve moisture in
26 the forest.

27 (m) The preservation of heritage trees and biologic reserves is
28 a compatible use in timberland production zones within the
29 meaning of subdivision (h) of Section 51104 of the Government
30 Code.

31 (n) The people of the state of California encourage counties
32 and cities across the state to preserve old-growth trees within
33 their jurisdictions.

34 (o) The people of the state of California request that Congress,
35 all federal agencies, and federal land managers extend at least the
36 same protections to old-growth trees on federal lands in
37 California that this measure extends to old-growth trees on
38 nonfederal land.

39 (p) The loss of the last of California's old-growth heritage is
40 not sustainable.

1 4595.2. It is the intent of the Legislature that this article be
2 construed in accordance with the following primary objectives:

3 (a) To protect old-growth trees in the state of California, in the
4 interest of heritage preservation and ecosystem conservation, for
5 the benefit of present and future generations.

6 (b) To maintain the ability of ancient and old-growth trees to
7 sequester carbon, thereby helping to avoid an increase in the
8 level of greenhouse gases in the atmosphere.

9 (c) To maintain the ability of ancient and old-growth trees to
10 transpire water and to provide shade and large woody debris to
11 streams, rivers, and creeks.

12 (d) To provide habitat for endangered and threatened wildlife
13 species that are dependent on or associated with old-growth trees.

14 (e) To encourage, as appropriate, the retention of old, large,
15 dead, dying, or deteriorating trees that provide necessary habitat
16 for wildlife and nutrients essential for forest health, and retain
17 moisture that enhances water quality and quantity.

18 (f) To ensure that timber operations and other operations near
19 heritage trees are modified and conducted to be consistent with
20 this article and to protect the integrity of the heritage trees.

21 4595.3. The following definitions apply to this article:

22 (a) “Emergency” means a sudden, unexpected occurrence
23 demanding immediate action to prevent or mitigate loss of, or
24 damage to, life, health, property, or essential public services.
25 “Emergency” may include fire, flood, earthquake, or other soil or
26 geologic movements, as well as riot, accident, or sabotage.

27 (b) “Forestland” means land, other than land owned by the
28 federal government, that was, as of the effective date of this
29 section, available for and capable of growing a crop of trees of
30 commercial species used to produce lumber and other forest
31 products, including Christmas trees. Commercial species are
32 those species so designated by the board.

33 (c) (1) “Heritage tree” means an old-growth tree on forestland,
34 and listed in paragraph (2), that has at least the minimum
35 diameter at stump height, measured outside the bark, as specified
36 in paragraph (2) for that species. “Heritage tree” means all stems
37 of multistemmed trees on forestland, and listed in paragraph (2),
38 that have a stem that is an old-growth tree and for which the sum
39 of the cross-sectional areas of all of the stems at stump height,
40 measured outside the bark, is equal to or greater than the area of

1 a circle with the diameter specified in paragraph (2) for that
2 species. For Coast redwood, a multistemmed tree includes only
3 those stems that are cojoined at the surface of the bark at stump
4 height.

5 (2) The minimum diameter at stump height is the following for
6 the following tree species:

- 7 (A) Coast redwood: 42 inches.
- 8 (B) California Red fir: 40 inches.
- 9 (C) Douglas-fir: 40 inches.
- 10 (D) Grand fir: 32 inches.
- 11 (E) Giant sequoia or sierra redwood: 50 inches.
- 12 (F) Hardwoods: 28 inches.
- 13 (G) Incense-cedar: 40 inches.
- 14 (H) Monterey pine: 36 inches.
- 15 (I) Port Orford cedar: 28 inches.
- 16 (J) Jeffrey pine: 36 inches.
- 17 (K) Lodgepole pine: 28 inches.
- 18 (L) Ponderosa pine: 34 inches.
- 19 (M) Sugar pine: 40 inches.
- 20 (N) Western Juniper: 40 inches.
- 21 (O) Western White pine: 32 inches.
- 22 (P) White fir: 44 inches.

23 (d) “Old-growth tree” means a tree that has a stem that existed
24 in 1850.

25 (e) “Stump height” means the height at which a tree was cut
26 from the stump if cut, or 12 inches above the ground on the side
27 adjacent to the highest ground level, whichever is closest to the
28 ground.

29 4595.4. (a) Except as authorized by this section and Section
30 4595.5, the following apply:

31 (1) A person shall not cut or cause a substantial probability of
32 significant harm to a heritage tree in the state. Timber and other
33 operations shall be modified and conducted to be consistent with
34 this article and shall protect the integrity of a heritage tree. All
35 forest practices, where heritage trees are present, shall
36 demonstrably protect the canopy, trunk, roots, and wind-firmness
37 of heritage trees.

38 (2) A person shall not use a heritage tree in a manner that
39 significantly harms a heritage tree.

1 (3) A person shall not cut a heritage tree pursuant to any of the
2 exemptions in Section 4584 or 4628 or other statutory or
3 regulatory provision of law.

4 (4) The board shall not adopt a regulation pursuant to this
5 section or other provision of law that requires or authorizes the
6 cutting of, or significant harm to, a heritage tree.

7 (b) The basal areas and point counts of heritage trees shall be
8 limited to the value of the minimum diameter at stump height for
9 the species shown in paragraph (2) of subdivision (c) of Section
10 4595.3.

11 (c) Prior to a preharvest inspection, all heritage trees within a
12 plan shall be personally marked for retention by a registered
13 professional forester.

14 (d) A heritage tree may be cut or harmed if it is necessary in
15 an emergency.

16 (e) A heritage tree may be cut or harmed under any of the
17 following conditions:

18 (1) The tree poses an imminent danger of falling into a utility
19 line or facility.

20 (2) The tree poses an imminent danger to a utility employee or
21 member of the public.

22 (3) The tree poses an imminent danger of falling on a
23 residence, hotel, motel, lodge, or other similar place of human
24 habitation, registered historic building, or site of cultural or
25 archaeological importance.

26 (f) Heavy equipment associated with timber operations is
27 excluded from within a horizontal radius of 100 feet of a heritage
28 tree of the Port Orford cedar or giant sequoia species, except
29 upon permanent roadways in existence on January 1, 2006.

30 (g) Roads may be built within a horizontal radius of 100 feet
31 of a heritage tree of the Port Orford cedar or giant sequoia
32 species only if there is no other feasible routing that avoids
33 greater environmental harm, if the construction, maintenance,
34 and use does not endanger the stability, health, and longevity of
35 the heritage trees, and if the road is for the construction and
36 maintenance of any of the following:

37 (1) A permanent public road by a government agency.

38 (2) An access way or driveway to reach a government-owned
39 facility.

40 (3) An access to a utility line or facility.

1 (4) A private road or driveway as the sole access to a structure
2 for human habitation.

3 (5) A public fire protection agency community fire break.

4 (h) A heritage tree may be sanitation logged if all of the
5 following occur:

6 (1) A registered professional forester certifies in a form
7 prescribed by the board that the tree is dead or dying.

8 (2) The director concurs with the registered professional
9 forester's certification that there is a substantial likelihood of the
10 spread of disease or insect infestation to surrounding trees if the
11 diseased or infested tree is not immediately removed. If the
12 director concurs with the certification, the director shall sign the
13 concurrence.

14 (i) A prescribed burn for the purpose of reducing the risk of
15 harm to a heritage tree due to fire hazard, insects, disease, or
16 invasive species may be conducted at the direction of the
17 governmental agency responsible for fire suppression. Prior to
18 the prescribed burn, accumulated fuels shall be manually pulled
19 away from each heritage tree within the anticipated area of the
20 prescribed burn to minimize the risk of harm to the heritage tree.

21 (j) Measures including bracing, tree and limb cabling and
22 guying, cutting away and sealing of infected or infested tissues,
23 balancing, reducing windsail of branches, and applying or
24 injecting protective agents may be performed upon a heritage tree
25 if solely for the bona fide purpose of protecting, enhancing, and
26 extending the wind-firmness, stability, health, or longevity of the
27 heritage tree.

28 (k) (1) All environmental documents, as defined in paragraph
29 (3), shall indicate on the face of the document whether a heritage
30 tree is present within the area covered by the environmental
31 document.

32 (2) If an environmental document submitted to the department
33 indicates on its face that a heritage tree is present within the area
34 covered by the environmental document, the department shall
35 include that indication in a notice of filing of timber harvesting
36 plans made by the department under Section 4582.4.

37 (3) For purposes of this subdivision, "environmental
38 document" means a timber harvesting plan, program timber
39 harvesting plan, program timberland environmental impact
40 report, nonindustrial timberland management plan, modified

1 timber harvesting plan, any other timber operations plan, notice
2 of emergency timber operations, an exemption notice pursuant to
3 Section 1038 or 1104.1 of Title 14 of the California Code of
4 Regulations as those sections read on January 1, 2003, other
5 notice of timber operations, plan amendment, categorical
6 exemption filing, or construction, grading, or use permit
7 application submitted to a state or local agency.

8 (l) At the direction of an electrical corporation or local
9 publicly owned utility, a heritage tree may be pruned or cut as
10 necessary to comply with an order or tariff of the California
11 Public Utilities Commission, the Federal Energy Regulatory
12 Commission, the California Independent System Operator, or the
13 Department of Transportation's Office of Pipeline Safety. In
14 siting a new facility, consideration shall be given to the proximity
15 of heritage trees.

16 (m) As minimally necessary in order to minimize the vertical
17 continuity of vegetative fuels, heritage trees may be pruned from
18 the ground to a height and in a manner to be determined by the
19 board, when part of a bona fide fuelbreak surrounding a structure
20 for human habitation in compliance with Sections 4290 and 4291
21 where surface fuels have been removed and the pruning will
22 result in a reduction of fire spread, fire duration and intensity,
23 fuel ignitability, or ignition of the tree crown. The pruning of a
24 heritage tree shall be solely for the purpose of fire threat
25 reduction and be in accordance with a statute enacted, or
26 regulation adopted by the board, in implementation of this
27 section. Pruning pursuant to this section may not significantly
28 harm a heritage tree.

29 (n) This article does not require a revision of a management
30 plan for the Jackson State Demonstration Forest approved prior
31 to January 1, 2010.

32 (o) This article does not require a revision of nonindustrial
33 timber management plan documents for a nonindustrial timber
34 management plan approved prior to January 1, 2007, until a
35 change of ownership of the land described in the nonindustrial
36 timber management plan occurs or the nonindustrial timber
37 management plan is amended. It is a nonsubstantial deviation
38 from the approved timber management plan to substitute a like
39 volume of timber as replacement volume for a heritage tree
40 designated for harvest in the plan, distributed across younger age

1 classes to achieve or maintain an uneven aged timber stand and
2 sustained yield.

3 (p) All environmental documents, except a construction,
4 grading, or use permit application not submitted to the
5 department, a notice of emergency timber operations given
6 pursuant to subdivision (d) or (e) of Section 4595.4, and an
7 exemption notice given pursuant to subdivision (k) of Section
8 4595.4, shall contain the statement “No heritage tree shall be cut
9 or caused a substantial probability of significant harm.” The
10 board may permit the department to rely upon that statement, as
11 appropriate, without field inspection to determine the presence or
12 absence of heritage trees, or the probability of harm to a heritage
13 tree, in the plan approval process.

14 (q) (1) A person who cuts or directs the cutting of a heritage
15 tree shall file with the department a signed, written notice of
16 cutting a heritage tree, within two working days after the cut. The
17 board shall prescribe the form for the notice, which shall require
18 a description of the location and the reason for cutting the
19 heritage tree. The board shall provide notice of the filing of a
20 notice of cutting a heritage tree to a person who requests the
21 notice in writing.

22 (2) This subdivision does not apply to a firefighter acting
23 within his or her official duties and pursuant to subdivision (d).

24 (r) This section does not exempt the owner of timber harvested
25 from registering with the State Board of Equalization or from the
26 payment of any applicable timber yield taxes imposed pursuant
27 to Part 18.5 (commencing with Section 38101) of Division 2 of
28 the Revenue and Taxation Code.

29 4595.5. (a) A person whose timber operations comply with
30 an existing forestland management plan approved by an
31 independent certification organization prior to January 1, 2005,
32 and that meets all of the requirements set forth in paragraphs (1),
33 (2) and (3) in their entirety, shall be considered in compliance
34 with Section 4594.2, if that person complies with subdivision (q)
35 of Section 4594.4, and the registered professional forester (RPF)
36 submitting an environmental document, as defined in subdivision
37 (k) of Section 4594.4, attaches a copy of the forestland
38 management plan that expressly contains all the requirements set
39 forth below without limitation or exclusion, and certifies in
40 writing that the plan does all of the following:

1 (1) Protects all stands of old-growth trees of 3 contiguous
2 acres or larger that have not been previously entered.

3 (2) Maintains all stands of old-growth trees 3 contiguous acres
4 or larger that have been previously entered, but that retain
5 old-growth trees, structures, and functions.

6 (3) Maintains stands that have only residual old-growth trees
7 or other residual late successional stand characteristics.

8 (4) Complies with paragraph (1) of subdivision (k) of Section
9 4594.4.

10 (b) For purposes of these provisions, where “protect” means
11 that the stands and trees are not harvested, and where “maintain”
12 means all late successional stand growth structures and
13 components are maintained, including individual trees, the
14 forestland management plan shall provide for no net decline in
15 the stand area, or the old-growth characteristics of the stand.

16 (c) The registered professional forester shall certify in writing
17 that the timber operations to be carried out pursuant to an
18 environmental document submitted to the department, pursuant
19 to subdivision (a), fully comply with the old-growth protection
20 and maintenance provisions of the certified forest management
21 plan.

22 (d) If it is determined that the timber operations are not being
23 carried out consistent with the old-growth protection and
24 maintenance provisions of the certified forest management plan,
25 or that the certified forest management plan is no longer in effect,
26 the requirements of Section 4595.2 shall apply.

27 4595.6. (a) An agent of the state who is responsible for
28 allocating moneys, credits, or other benefits for preservation of
29 endangered species and natural lands, including, but not limited
30 to, conservation easements, purchases, and purchases of
31 development rights and other interests, may provide assistance to
32 owners of heritage trees in obtaining these benefits if available.
33 The benefits include, but are not limited to, state partnership
34 grants under Section 6 of the federal Endangered Species Act (16
35 U.S.C. Sec. 1535), grants under Title VIII of the federal
36 Department of the Interior and Related Agencies Appropriations
37 Act of 2001 (Land Conservation, Preservation and Infrastructure
38 Improvement Act, P.L. 106-291), and grants under the federal
39 Land and Water Conservation Fund Act of 1965 (P.L. 88-578),
40 or any successor provisions of law, and moneys in the Heritage

1 Tree Preservation Fund established by Section 4595.7. Moneys
2 obtained from these or other sources, for the purpose of carrying
3 out this article, that are not distributed directly to property
4 owners, pursuant to this article, may be deposited into the fund.

5 (b) The Wildlife Conservation Board shall spend moneys in
6 the fund for the purchase of fee title or of interests in real
7 property of heritage trees protected pursuant to this article. An
8 interest in real property shall be for a period of time that is not
9 less than the natural life of the heritage trees protected, in order
10 to protect the integrity and value of the heritage tree and to
11 provide habitat for associated wildlife species.

12 4595.7. (a) The Heritage Tree Preservation Fund is hereby
13 established in the State Treasury. Upon appropriation by the
14 Legislature, the moneys in the fund may be expended by the
15 Wildlife Conservation Board for the purposes of this article and
16 for the administrative costs in implementing this article.

17 (b) Moneys from any source may be deposited in the fund.
18 The Wildlife Conservation Board may accept gifts for deposit
19 into the fund. Proceeds from the sale of gifts of real property or
20 interests in real property by the Wildlife Conservation Board may
21 be deposited into the fund. The Wildlife Conservation Board
22 shall retain for public ownership gifts of real property or interests
23 in real property that would have qualified for purchase under
24 subdivision (f).

25 (c) All moneys deposited in the fund and income generated by
26 moneys in the fund shall be available for expenditure by the
27 Wildlife Conservation Board to carry out the purposes of this
28 article.

29 (d) An appropriation or expenditure of moneys in, or income
30 generated by, the fund, for a purpose that is not authorized by
31 this article is void.

32 (e) Moneys in the fund shall not be appropriated or expended
33 to repay the principal of a bond, to pay the interest on a bond, or
34 to refund a bond. Moneys in the fund shall not be lent or pledged
35 for any purpose.

36 (f) Income generated by, and the principal of, the fund are
37 available for the direct, permanent protection of old-growth trees,
38 which includes, but is not limited to, fee title acquisition and
39 conservation easement acquisition.

1 4595.8. (a) (1) A person who performs, conducts, orders, or
2 directs timber operations or other action in violation of this
3 article is subject to the penalties of Article 8 (commencing with
4 Section 4601) of this chapter, and an additional civil penalty in
5 an amount that is equal to the greater of one of the following:

6 (A) The amount of the proceeds, value, or income received or
7 promised in connection with the violation.

8 (B) The amount of the anticipated economic benefit to be
9 derived as a result of the violation, if the amount can be
10 reasonably determined.

11 (C) Three times the fair market value of the tree affected by
12 the violation.

13 (2) Moneys collected from the additional civil penalty
14 authorized by paragraph (1) shall be deposited in the Heritage
15 Tree Preservation Fund. In addition to other penalties imposed by
16 law, the court may seize and confiscate the proceeds, value, or
17 income from the sale of an illegally cut tree. If an illegally cut
18 tree has not been sold, the court may order the tree to be
19 confiscated and sold. If an illegally cut tree is of the genera
20 Sequoiadendron or Sequoia and it has not been removed from the
21 forest or sold, the court may order that the tree remain in the
22 forest. All proceeds, after actual expenses, from the sale of a tree
23 pursuant to this subdivision shall be deposited in the fund.

24 (b) The penalties and remedies of this section are concurrent
25 and not alternative to other civil, criminal, or administrative
26 rights, remedies, or penalties for that violation.

27 (c) For purposes of this article the time period for commencing
28 a civil action subject to Section 338 of the Code of Civil
29 Procedure shall be within 3 years after the cause of action is
30 deemed to have accrued. The cause of action is not deemed to
31 have accrued until the discovery by the department of the facts
32 constituting the grounds for commencing the action.

33 4595.9. (a) All timber operations shall comply with this
34 article.

35 (b) This article is enforceable by a state or local public officer
36 having appropriate jurisdiction.

37 (c) The board shall adopt regulations that the board considers
38 necessary to implement and to obtain compliance with this article
39 and to protect life, property, and the environment.

1 (d) The board shall adopt regulations, initially as emergency
2 regulations in accordance with subdivision (e), that the board
3 considers necessary to implement and to obtain compliance with
4 Section 4595.4, Section 4595.5, and subdivision (a) of Section
5 4595.8, and to protect life, property, and the environment.

6 (e) The emergency regulations adopted pursuant to
7 subdivision (d) shall be adopted in accordance with the
8 rulemaking provisions of the Administrative Procedure Act
9 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
10 Division 3 of Title 2 of the Government Code). For purposes of
11 that chapter, including Section 11349.6 of the Government Code,
12 the adoption of emergency regulations shall be considered by the
13 Office of Administrative Law to be necessary for the immediate
14 preservation of the public peace, health and safety, and general
15 welfare.

16 SEC. 2. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the
21 penalty for a crime or infraction, within the meaning of Section
22 17556 of the Government Code, or changes the definition of a
23 crime within the meaning of Section 6 of Article XIII B of the
24 California Constitution.